

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FANG CONG and LIN JIANG,

**Plaintiffs,**

V.

XUE ZHAO; "Conveyor Belt Sushi"; and  
VALVE CORPORATION,

## Defendants

CASE NO. 2:21-cv-01703-TL

## ORDER ON MOTION FOR RECONSIDERATION

This matter is before the Court on Plaintiffs Fang Cong and Lin Jiang's Motion for

Reconsideration. Dkt. No. 70. Having reviewed Defendant Valve Corporation's response (Dkt. No. 72) and the relevant record, the Court DENIES the motion.

## I. BACKGROUND

The Court assumes familiarity with the facts of the case. Relevant here, on August 5, 2024, Defendant Valve filed a motion to dismiss, primarily arguing that the statute of limitations had run on Plaintiffs' copyright claim against it. *See* Dkt. No. 54 at 5–8. Plaintiffs opposed the motion, arguing that their addition of Valve as a defendant in November 2023 was timely.

1 because the statute of limitations did not start running until January 2022, when Defendant Valve  
 2 reinstated the subject copyrighted material—the video game *Things As They Are* (“TATA”—to  
 3 Steam, its video-game sales platform. *See* Dkt. No. 57 at 6–8. Plaintiffs argued that the statute of  
 4 limitations “should be calculated from the time Plaintiffs actually discovered Defendant  
 5 Valve[’s] infringing acts.” *Id.* at 6. On November 15, 2024, the Court granted the motion, finding  
 6 that the statute of limitations started running on June 18, 2019, when Defendant Zhao published  
 7 *TATA* on Steam—an act that Plaintiffs were aware of by at least August 2019. *See* Dkt. No. 63 at  
 8 5–8. Plaintiffs now bring the instant motion to reconsider that Order. Dkt. No. 70. Plaintiffs  
 9 argue that “there were serious errors of fact and law in the Court’s prior ruling.” *Id.* at 1.  
 10 Specifically, Plaintiffs allege the Court did not properly account for the Separate Accrual Rule in  
 11 considering the statute of limitations issue. *Id.* Plaintiffs also assert that they “found new  
 12 evidence” that support their arguments. *Id.* at 2.

## 13                   **II.        LEGAL STANDARD**

14                   Federal Rule of Civil Procedure 59(e) permits a court to “alter or amend” a judgment.  
 15 “Rule 59(e) amendments are appropriate if the district court (1) is presented with newly  
 16 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or  
 17 (3) if there is an intervening change in controlling law.” *In re Syncor ERISA Litig.*, 516 F.3d  
 18 1095, 1100 (9th Cir. 2008). “Although Rule 59(e) permits a district court to reconsider and  
 19 amend a previous order, the rule offers an ‘extraordinary remedy, to be used sparingly in the  
 20 interests of finality and conservation of judicial resources.’” *Kona Enters., Inc. v. Est. of Bishop*,  
 21 229 F.3d 877, 890 (9th Cir. 2000) (quoting 12 James Wm. Moore et al., *Moore’s Fed. Prac.* §  
 22 59.30[4] (3d ed. 2000)). “A Rule 59(e) motion may *not* be used to raise arguments or present  
 23 evidence for the first time when they could reasonably have been raised earlier in the litigation.”  
 24

1       *Id.* (emphasis in original). Such motion “must be filed no later than 28 days after the entry of  
 2 judgment.” Fed. R. Civ. P. 59(e).

3              Federal Rule of Civil Procedure 60(b) permits a party to “relieve a party or its legal  
 4 representative from a final judgment, order, or proceeding” for certain enumerated reasons.  
 5 Among those reasons are “mistake,” Fed. R. Civ. P. 60(b)(1), including judicial errors of law, *see*  
 6 *Kemp v. United States*, 596 U.S. 528, 539 (2022), and “newly discovered evidence that, with  
 7 reasonable diligence, could not have been discovered in time to move for a new trial under Rule  
 8 59(b),” Fed. R. Civ. P. 60(b)(2). A Rule 60(b) motion “must be made within a reasonable time.”  
 9 Fed. R. Civ. P. 60(c)(1); *see Bynoe v. Baca*, 966 F.3d 972, 980 (9th Cir. 2020) (“To evaluate  
 10 whether a party’s delay in filing a Rule 60(b) motion was reasonable, we consider the party’s  
 11 ability to learn earlier of the grounds relied upon, the reason for the delay, the parties’ interests in  
 12 the finality of the judgment, and any prejudice caused to parties by the delay.” (citing *Ashford v.*  
 13 *Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981))).

14              Local Civil Rule 7(h)(1) instructs that “[m]otions for reconsideration are disfavored.”  
 15 Such motions must be denied absent a showing of “manifest error in the prior ruling or . . . new  
 16 facts or legal authority which could not have been brought to [the Court’s] attention earlier with  
 17 reasonable diligence.” *Id.* Motions for reconsideration should be granted only in “highly unusual  
 18 circumstances.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880  
 19 (9th Cir. 2009) (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999));  
 20 see also *Inventist, Inc. v. Ninebot Inc.*, 664 F. Supp. 3d 1211, 1215 (W.D. Wash. 2023) (noting  
 21 reconsideration is an “extraordinary remedy,” and the moving party bears a “heavy burden”). “A  
 22 motion for reconsideration ‘may not be used to raise arguments or present evidence for the first  
 23 time when they could reasonably have been raised earlier in the litigation.’” *Maryln*  
 24 *Nutraceuticals*, 750 F.3d at 880 (quoting *Kona Enters.*, 229 F.3d at 890). “Whether or not to

1 grant reconsideration is committed to the sound discretion of the court.” *Navajo Nation v.*  
 2 *Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).  
 3 Finally, a motion for reconsideration “shall be filed within fourteen days after the order to which it  
 4 relates is filed.” LCR 7(h)(2). Failure to comply with this deadline and other requirements “may be  
 5 grounds for denial of the motion.” *Id.*

### 6 III. DISCUSSION

7 Plaintiffs purport to bring this motion under Rules 59 and 60, even as they title the  
 8 motion a “Motion for Reconsideration.” *See* Dkt. No. 70 at 2. Defendant argues that the motion  
 9 is governed instead by Local Civil Rule 7(h). *See* Dkt. No. 72 at 2. Regardless of which Rule is  
 10 applied, Plaintiffs’ motion must be denied. *See, e.g., Klineburger v. Constantine*, No. C23-958,  
 11 2023 WL 8480765, at \*2 (W.D. Wash. Nov. 15, 2023) (denying motion under Rules 59 and 60  
 12 as well as LCR 7(h)); *Wallace v. Live Nation Worldwide, Inc.*, No. C20-799, 2021 WL 4033771,  
 13 at \*2 (W.D. Wash. Sept. 3, 2021) (same). Defendant Valve aptly summarizes the problem:  
 14 Plaintiffs “seek leave to re-argue a statute of limitations issue already addressed in the Motion to  
 15 Dismiss and to offer additional alleged evidence that was always available to them but which  
 16 they did not raise either in their Second Amended Complaint or in their opposition to  
 17 [Defendant] Valve’s Motion to Dismiss.” Dkt. No. 72 at 1.

#### 18 A. Rule 59(e)

19 Plaintiffs’ motion fails under Rule 59(e). Plaintiffs are patently seeking to raise new  
 20 arguments and present evidence for the first time that could have reasonably been raised earlier  
 21 in this litigation. *Kona Enters.*, 229 F.3d at 890.

22 As to arguments, Defendant Valve raised the Separate Accrual Rule in its Motion to  
 23 Dismiss (*see* Dkt. No. 54 at 6) but Plaintiffs inexplicably failed to address this issue in their  
 24 response (*see generally* Dkt. No. 57). Plaintiffs admit that their response “failed to adequately

1 consider and cite relevant legal provisions,” a failure that was “unintentional” and a result of  
 2 their “inexperience as Pro Se litigants and misunderstanding of the law.” Dkt. No. 70 at 3. But as  
 3 this Court has repeatedly instructed, including in this matter, “[i]t is axiomatic that pro se  
 4 litigants, whatever their ability level, are subject to the same procedural requirements as other  
 5 litigants.” Dkt. No. 51 at 4 (quoting *Muñoz v. United States*, 28 F.4th 973, 978 (9th Cir. 2022)).

6 As to facts, Plaintiffs do not explain why their purported “newly discovered evidence”  
 7 (Dkt. No. 70 at 2) could not have been raised at any prior point in this litigation, or at least in  
 8 their opposition to Defendant Valve’s Motion to Dismiss. *See Maryln Nutraceuticals*, 750 F.3d  
 9 at 880. Plaintiffs’ “new” evidence consists of screenshots purporting to show *TATA* updates and  
 10 sales, as well as other acts by Defendant Valve. *See* Dkt. No. 70-1. But the vast majority of this  
 11 evidence is dated prior to Defendant Valve’s motion—some of it even prior to the filing of this  
 12 lawsuit—and as Defendant Valve argues (*see* Dkt. No. 72 at 5–6), Plaintiffs do not explain why  
 13 this evidence was not previously presented to the Court.

14 **B. Rule 60(b)**

15 Plaintiffs’ motion also fails under Rule 60(b). As Defendant Valve argues (*see* Dkt.  
 16 No. 72 at 3–5), Plaintiffs do not explain how their now-cited legal authorities demonstrate  
 17 “mistake” in the Court’s prior Order; instead, they simply cite cases for the broad principle of the  
 18 Separate Accrual Rule and make conclusory statements about their application to this matter. *See*  
 19 Dkt. No. 70 at 2–5. For example, Plaintiffs cite *Capital Records, LLC v. ReDigi Inc.*, 910 F.3d  
 20 649 (2d Cir. 2018), as a case where the court “applied the Separate Accrual Rule continuous  
 21 infringement related to a digital product” (Dkt. No. 70 at 3), but as Defendant Valve points out  
 22 (Dkt. No. 72 at 5), that decision does not analyze the Separate Accrual Rule or discuss the  
 23 Copyright Act’s statute of limitations at all. Plaintiffs also continue to ignore *Bell v. Oakland*  
 24 *Cnty. Pools Project, Inc.*, No. C19-1308, 2020 WL 4458890, at \*5 (N.D. Cal. May 4, 2020),

cited by Defendant Valve in its Motion to Dismiss (*see* Dkt. No. 54 at 6), which found that “the mere fact that [an infringing] document remained online does not trigger the separate-accrual rule.” Defendant Valve raises the concern that allowing good-faith compliance with the DMCA’s take-down and put-back procedure to constitute a separate copyright infringement “would have the perverse result of punishing compliance with the DMCA and would create zombified copyright actions, allowing plaintiffs to vivify time-barred infringement claims by sending DMCA take-down notices whenever they decided it was in their financial interest to pursue claims that were barred by the statute of limitations.” Dkt. No. 72 at 6–7. The Court, like Defendant Valve, has found no case supporting this proposal.

Further, as discussed above, *see supra* Section III.A, Plaintiffs do not explain why their “newly discovered evidence” was not previously presented to the Court. And Plaintiffs’ delay in filing a Rule 60(b) motion was unreasonable, as Plaintiffs could have raised the Separate Accrual Rule at the time of Defendant Valve’s motion but inexplicably did not do so. *See Bynoe*, 966 F.3d at 980.

### **C. LCR 7(h)**

Finally, Plaintiffs’ motion also fails under LCR 7(h). As an initial matter, the deadline to file a motion for reconsideration was 14 days after the Court’s prior Order (*i.e.*, November 29, 2024); this delay alone is grounds for denial, and it suggests that Plaintiffs are trying to use Rules 59 and 60 to make an end-run around LCR 7(h). Moreover, as discussed above, Plaintiffs have not demonstrated any legal error, let alone “manifest error,” in the Court’s prior Order. *See supra* Section III.B. And as also discussed, Plaintiffs do not explain why their arguments and evidence are “new facts or legal authority” that could not have been brought to the Court’s attention earlier. *See supra* Sections III.A–B.

1                   **IV. CONCLUSION**

2                   Accordingly, Plaintiffs' Motion for Reconsideration (Dkt. No. 70) is DENIED.

3                   Dated this 6th day of March 2025.

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5                   \_\_\_\_\_  
6                   Tana Lin  
7                   United States District Judge